

June 28, 2006

Alessandro A. Iuppa, Superintendent  
Attn: Vanessa J. Leon  
Docket No. INS-06-900  
Maine Bureau of Insurance  
34 State House Station  
Gardiner, Maine 04333-0034

In Re: Review Of Aggregate Measurable Cost Savings Determined By Dirigo Health  
For The Second Assessment Year

**FILING COVERSHEET**

Dear Superintendent Iuppa:

Enclosed for filing please find the following:

SUBMITTED BY: Anthem BCBS, Maine Association of Health Plans, Maine  
Automobile Dealers Insurance Trust and Maine State Chamber of  
Commerce

DATE: June 28, 2006

DOCUMENT TITLE: Joint Letter Concerning Undisclosed Affiliations of Dirigo Board  
Member

DOCUMENT TYPE: Letter

CONFIDENTIAL: **NO**

Thank you for your assistance in this matter.

Very truly yours,

/s/ Counsel for Intervenors

# NON-CONFIDENTIAL

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STATE OF MAINE  
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION  
BUREAU OF INSURANCE

IN RE:	)	
	)	
REVIEW OF AGGREGATE	)	JOINT LETTER CONCERNING
MEASURABLE COST SAVINGS	)	UNDISCLOSED AFFILIATIONS OF
DETERMINED BY DIRIGO HEALTH	)	DIRIGO BOARD MEMBER
FOR THE SECOND ASSESSMENT	)	
YEAR	)	
	)	
<b>Docket No. INS-06-900</b>	)	June 28, 2006
	)	

NON-CONFIDENTIAL

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Dear Mr. Superintendent:

The undersigned counsel for Intervenors Anthem Health Plans of Maine, Inc., Maine State Chamber of Commerce, Maine Association of Health Plans, and Maine Automobile Dealers Association Insurance Trust (“Intervenors”) unfortunately must bring to your attention a matter that is disturbing and undermines the credibility and propriety of the decision of the Dirigo Health Agency Board (“DHA Board”) currently under review by you and your Staff.

The undersigned recently learned that Edmund “Ned” McCann, one of the members of the Dirigo Health Agency Board of Directors (“DHA Board”) who deliberated with the other two DHA Board members during the year 2 proceeding and voted on each component of the aggregate measurable cost savings (“AMCS”) for year 2, as well as the vote adopting the AMCS decision itself, is also a member of the Board of Directors of Consumers for Affordable Healthcare (“CAHC”).

This information came to light after a review of a June 16, 2006 filing letter by CAHC on which Mr. McCann is listed as a board member. (*See* Attachment A.) Intervenors received that letter on or around June 19 and have since attempted to learn the facts surrounding Mr. McCann’s membership on the CAHC Board. Further review of CAHC’s website revealed that Mr. McCann is listed as a Board member. (*See* Attachment B.)<sup>1</sup> Moreover, CAHC’s IRS Form 990 for 2004 (the last year available) identifies Mr. McCann as a Director.

This revelation is disturbing because of its obvious implications on the Intervenors’ fundamental right to an impartial board in an adjudicatory hearing, but also because the failure to disclose this affiliation to the Intervenors precluded Intervenors’ from being able to object and obtain an appropriate remedy before the proceeding (including the DHA Board’s deliberations and vote on a decision) was concluded.

As set forth in the Intervenors’ briefs in this matter, the proceedings before the DHA Board were riddled with procedural irregularities that skewed the balance that is supposed to apply to an adjudicatory proceeding conducted under the Maine Administrative Procedures Act. These irregularities alone were, in both frequency and degree, significant enough to warrant heightened scrutiny of the Board’s decision, but in any event, eliminate any thought that the Board’s factual and legal determinations were entitled to any deference. We cannot know to what degree Mr. McCann’s affiliation with CAHC impacted his decision-making in this matter, but the failure to disclose the affiliation is mystifying and further undermines the DHA Board’s factual and legal determinations in this matter.

That this affiliation should have been disclosed is obvious. Others on the DHA Board recused themselves from the deliberations and vote based on perceived bias one way or the other. Trish Riley and Rebecca Wyke were both advocates for the Dirigo Program and its funding and, in the case of Ms. Riley, was involved in the development of the methodology for year 2 advocated by DHA. Accordingly, both were recused from any involvement in the deliberations or vote. Similarly, Dana Connors, President of the Maine State Chamber of Commerce, recused himself

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<sup>1</sup> The website lists the members of the Board for 2005.

based on his affiliation with the Chamber. If the silence from the DHA Board, Mr. McCann and counsel for CAHC could otherwise somehow be excused as an oversight, these several recusals by DHA Board members remove the potential for any excuse for the failure to disclose Mr. McCann's affiliation.

The determination of whether the DHA Board's decision for year 2 is valid, or instead *void ab initio* based on Mr. McCann's affiliation and failure to disclose is, in Intervenor's view, a determination not for the Superintendent, but instead, for the Maine Courts. Intervenor respectfully suggest, however, that the record, evidence and factual and legal determinations made by the DHA Board must be viewed in the context of that undisclosed affiliation to CAHC and, as such, those determinations should be entitled to no deference whatsoever. This will not un-do the actions that have tainted this proceeding, but to do otherwise would essentially sanction this impropriety, eliminate meaningful review by the Superintendent, further taint an already imbalanced proceeding and perpetuate the absence of the even playing field that is a fundamental requirement of a fair adjudicatory proceeding.

DATED: June 28, 2006

Respectfully submitted,

/s/ Christopher T. Roach  
Christopher T. Roach, Esq.  
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/s/ William Stiles  
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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 28, 2006, a copy of Intervenor's Joint Letter Concerning Undisclosed Affiliations of DHA Board Member was served on each of the persons listed below.

Compass Health Analytics, Inc.  
ATTN: Jim Highland  
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Alessandro A. Iuppa, Superintendent  
ATTN: Vanessa J. Leon, Docket No.  
INS-06-900  
Bureau of Insurance  
Maine Department of Professional and  
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DATED: June 28, 2006

/s/ Counsel for Intervenor  
Counsel for Intervenor